

APPEAL NO. 010138

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 20, 2000. The hearing officer presiding as hearing officer. The hearing officer determined that the appellant (claimant) had not sustained a low back injury on \_\_\_\_\_ (all dates are 2000 unless otherwise noted), and that the claimant had not sustained disability.

The claimant appealed and the respondent (carrier) responded.

DECISION

Affirmed.

The claimant was employed as a custodian at a baseball park and testified that on Friday, \_\_\_\_\_, she sustained a low back injury when she slipped on some stairs. Most of the evidence is in dispute, including whether the claimant was even at work on \_\_\_\_\_ and whether the claimed injury occurred on some stairs or while mopping. Although reporting is not an issue, there was conflicting evidence to whom and when the claimant reported the alleged injury. The claimant was either terminated for poor job performance or laid off on August 22. On August 29, the claimant returned to the employer's premises with back complaints and was sent to (clinic) where she was diagnosed with a low back strain. Subsequent doctors also diagnosed tenderness, muscle spasms, and a lumbar sprain. The carrier contends that the claimant was not working on \_\_\_\_\_ and emphasizes conflicting testimony and evidence (no evidence that the claimant signed in on \_\_\_\_\_). The hearing officer commented that the claimant's "testimony simply was not persuasive."

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

In that we are affirming the hearing officer's decision that the claimant had not sustained a compensable injury, the claimant, by definition in Section 401.011(16), cannot have disability.

The decision and order of the hearing officer are affirmed.

---

Thomas A. Knapp  
Appeals Judge

CONCUR:

---

Judy L. S. Barnes  
Appeals Judge

---

Elaine M. Chaney  
Appeals Judge